

## **REMARKS**

The enclosed is responsive to the Examiner's Office Action mailed on July 21, 2008. At the time the Examiner mailed the Office Action, claims 1-9 and 19-30 were pending. By way of the present response applicant has: 1) amended no claims; and 2) added no claims; and 3) canceled no claims. As such, claims 1-9 and 19-30 remain pending. Applicant respectfully requests reconsideration of this application.

### **Claim Rejections - 35 U.S.C. §103(a)**

Claims 1-9 and 19-30 have been rejected under 35 U.S.C. §103 as being unpatentable over Abbott, et al., U.S. Patent No. 6,314,463 (hereinafter "Abbott") in view of "Cooperative Scheduling of Tasks for Networked Uninhabited Autonomous Vehicles", Andrew Sparks, et al., IEEE, 2003 (hereinafter "Sparks") and further in view of "A Flexible Monitoring Platform to Build Cluster Management Services", Bertil Folliot, et al, IEEE, 2000 (hereinafter "Folliot"). Applicant does not admit that Sparks is prior art and reserves the right to challenge the reference at a later date.

Abbott describes a method and system for balancing web page requests among a plurality of web servers. In particular, Abbott describes tracking the average processing time required to process each request for each web server and, if the processing time exceeds a threshold for a server, preventing requests from being redirected to that server. (Abbott, col. 26, lines 35-42).

Sparks describes cooperative scheduling of tasks for a network of uninhabited autonomous vehicles (UAVs). In particular, once a mission has been assigned to the group of UAVs, the UAVs must cooperate to decide which UAV should process each task. In analyzing the performance of different strategies, Sparks describes computing an average of the time a task is "ignored" and an average of that average.

Folliot describes a distributed monitoring platform to build cluster management services. In particular, Folliot discloses, "a load balancing tool needs monitoring at a variable frequency, and requires to be informed when an important load variation occurs." (Folliot, 3.1 The system monitoring agent, Monitoring conditions, p. 261).

Applicant respectfully submits that the references, alone or in combination, fail to teach or suggest

An apparatus comprising:

a first queue to track a current rate of task completion;

a second queue to track an average rate of task completion over time;

a comparator to compare an average of values stored in the first queue and an average of values stored in the second queue; and

a throttle to reduce a number of connections available on the apparatus if the comparator indicates that the average of the first queue is larger than the average of the second queue, **wherein the comparator triggers comparisons more often as the number of connections is decreased.**

(Claim 1, emphasis added).

Applicant respectfully submits that the combination of Abbott, Sparks, and Folliot does not teach or suggest wherein the comparator triggers comparisons more often as the number of connections is decreased. Applicant agrees with the Office Action's statement that Abbott in view of Sparks does not teach triggering comparisons more often as the number of connections is decreased. (Office Action mailed 7/21/08, page 5). On the other hand, Applicant disagrees with the Office Action's assertion that Folliot teaches this claim element. The Examiner suggests that in stating, "a load balancing tool needs monitoring at a variable frequency, and requires to be informed when an important load

variation occurs.” (Folliot, p. 261) Applicants respectfully disagree. While a variable frequency monitoring is discussed by Folliot, this does not imply that the frequency varies by the number of connections.

The statement that a load balancing tool monitors at a variable frequency and that it needs to be informed of important load variations does not teach or suggest a comparator triggering comparisons more often as a number of connections is decreased. Folliot describes that monitoring can be performed with tunable granularity and that the “granularity can be dynamically modified using a location independent control mechanism.” (Folliot, 2 General overview, p. 259). Nevertheless, Folliot does not tie the modification of granularity to a decrease in the number of connections.

Furthermore, Folliot describes that the load balancing tool can initiate “a fine grain monitoring of the application and the operating system **before taking a decision**, and then return to a coarse grain observation afterwards.” (Folliot, 4.1 Load balancing tool, p. 263). An increase in monitoring prior to taking a decision does not teach or suggest triggering comparisons more often as a number of connections is decreased. Folliot describes fine grain monitoring for the purpose of decision-making, not in reaction to a number of connections being decreased. In fact, if the decision in Folliot is compared to decreasing the number of connections in claim 1, Folliot teaches away from claim 1 in that it teaches returning to a coarse grain observation after the decision is made, rather than initiating the fine grain monitoring in response to said decision.

Accordingly, Applicant respectfully requests withdrawal of the rejections of claim 1 under 35 U.S.C. § 103(a) as being unpatentable over Abbott, Sparks, and Folliot.

Given that claims 2-9 and 19 are dependent claims with respect to claim 1, and include additional features, Applicant submits that claims 2-9 and 19 are not obvious under 35 U.S.C § 103(a) in view of Abbott, Sparks, and Folliot. Accordingly, Applicant respectfully requests withdrawal of the rejections of claims 2-9 and 19 under 35 U.S.C. § 103(a) as being unpatentable over Abbott, Sparks, and Folliot.

Regarding claim 20, the combination of Abbott, Sparks, and Folliot fails to teach or suggest

A method of resource allocation comprising:  
comparing a current average rate of task completion of a system to an average of averages, wherein the average of averages is the average of a plurality of the results of each of the current average rate of task completion over time;  
reducing a number of tasks executed by the system if the current average rate of task completion is larger than the average of averages, **wherein the comparison is triggered more frequently as the number of tasks executed is reduced.**

(Claim 20, emphasis added). As noted above, Abbott and Sparks do not address comparison triggering, and Folliot teaches away from triggering the comparison more frequently as the number of tasks executed is reduced.

Accordingly, Applicant respectfully requests withdrawal of the rejections of claim 20 under 35 U.S.C. § 103(a) as being unpatentable over Abbott, Sparks, and Folliot for at least the same reasons as above.

Given that claims 21-30 are dependent claims with respect to claim 20, either directly or indirectly, and include additional features, Applicant submits that claims 21-30 are not obvious under 35 U.S.C § 103(a) in view of Abbott, Sparks, and Folliot. Accordingly, Applicant respectfully requests

withdrawal of the rejections of claims 21-30 under 35 U.S.C. § 103(a) as being unpatentable over Abbott, Sparks, and Folliot.

### **Conclusion**

In view of the foregoing remarks, Applicant respectfully submits that the pending claims are in condition for allowance. Applicant respectfully requests reconsideration of the application and allowance of the pending claims.

If the Examiner determines the prompt allowance of these claims could be facilitated by a telephone conference, the Examiner is invited to contact Ryan Elliott at (408) 720-8300.

### **Deposit Account Authorization**

Authorization is hereby given to charge our Deposit Account No. 02-2666 for any charges that may be due. Furthermore, if an extension is required, then Applicant hereby requests such extension.

Respectfully submitted,

BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP

Dated: September 22, 2008

/Ryan W. Elliott/

Ryan W. Elliott  
Reg. No 60,156

1279 Oakmead Parkway  
Sunnyvale, CA 94085  
(408) 720-8300